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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 17

THOMAS P. McMAHON;

Petitioner,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES MARITIME COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S BRIEF

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Preliminary Statement

The judgment of the Court of Appeals was entered December 28, 1950. On May 14, 1951 this Court granted the petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Question Presented

When does the "cause of action" within the meaning of the Suits in Admiralty Act of March 9, 1920, 46 U. S. C. A., Sec. 741 *et seq.* arise as applied to an action instituted under the authority of the War Shipping Administration (Clarification) Act of March 4, 1943, 50 U. S. C. A., Sec. 1291?

Summary of the Matter Involved

Petitioner is a merchant seaman of the United States Merchant Marine.

This is his libel in admiralty, asserting two causes of action: one for damages and the other for wages and maintenance and cure (Record, pp. 2-4). Two accidents are involved in the damage phase of the case; the first was sustained in November and the other in December, 1945. The libel was filed January 22, 1948 (Record, p. 2).

Prior to the institution of suit petitioner, in accordance with the provisions of the War Shipping Administration (Clarification) Act (March 4, 1943, 50 U. S. C. A., App. Sec. 1291), filed his claim with Alcoa Steamship Company, Inc., the general agent. On April 17, 1946 the general agent disallowed petitioner's Claim (Record, pp. 6, 7).

The libel was filed January 22, 1948 (Record, p. 2), more than two years after either accident but less than two years from April 17, 1946, the date of disallowance of his claim (Record, pp. 6, 7). Suit was instituted pursuant to the provisions of the Suits in Admiralty Act (March 9, 1920, 46 U. S. C. A., Sec. 741 *et seq.*) as required by the Clarification Act.

Respondents filed a motion to dismiss for lack of jurisdiction (Record, pp. 5, 6). While the motion alleged three grounds, respondents, in both Courts below, relied solely

upon the ground that the libel was not filed within the two-year limitation of the Suits in Admiralty Act, which provides that suits thereunder shall be brought within the two-year period after the cause of action arises. Respondents' contention was that the cause of action arose at the time of accident or injury; petitioner's contention was that the cause of action arose upon the administrative disallowance of his claim.

The motion to dismiss was directed against both causes of action. The District Court, by Order filed July 17, 1950, granted the motion as to the first cause of action insofar as it related to subparagraphs (a), (b), (c), (d), (e), (f) and (h) of paragraph 8 of the libel; and granted the motion to dismiss as to so much of the second cause of action for maintenance and cure as predated January 22, 1946 (Record, p. 10). Therefore, with respect to damages, all claims for negligence and unseaworthiness were dismissed. The District Court held that the cause of action arose at the time of accident or injury and not upon administrative disallowance of the claim.

On December 28, 1950, the United States Court of Appeals for the Third Circuit, in an opinion by Maris, J., affirmed the judgment of the District Court (Record, pp. 13-18). The opinion of the Court is reported in 186 F. 2d 227.

Summary of Argument

Petitioner contends that the Court of Appeals has misconstrued the term "cause of action" as applied to the facts of this case. A "cause of action" is predicated upon the entire state of facts that gives rise to an enforceable claim. The "cause of action" did not arise or accrue until the seaman's claim was disallowed since prior thereto he could not enforce it by court action.

Argument

I. Introductory

By the terms of the Clarification Act, officers and members of the crew employed on United States vessels as employees of the United States, through the War Shipping Administration, are given all the rights accorded to United States citizens employed as seamen on privately owned and operated American vessels, with respect to claims arising out of death, personal injuries, cure and maintenance, wages, etc. The same section provides that, as to these claims, they "shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act. . . ." And further, "When used in this subsection the term 'administratively disallowed' means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. . . ."

The administrator's regulations on this point are as follows:

> "Section 304.23. *Court action, condition precedent.* No seaman or his surviving dependent or beneficiary or legal representative having a claim under the provisions of Section 304.21 and 304.22, shall commence a court action for the enforcement of such claim unless such claim has been filed by him or on his behalf or by or on behalf of his surviving dependent or beneficiary or legal representative as provided in Sections 304.24 and 304.25, and has been administratively disallowed by the person or agency with whom it was so filed." (War Shipping Administration, General Order 32, 8 Fed. Reg. 5414). (Emphasis supplied.).

It will be noted that the Clarification Act provides that *a claim, administratively disallowed, shall be enforced* pur-

suant to the provisions of the Suits in Admiralty Act. That Act provides that suits "shall be brought within two years *after the cause of action arises.*" (Emphasis supplied.). The Clarification Act does not limit the time within which a claim shall be filed.

To summarize, petitioner sustained his injuries in November and December, 1945. His claim was administratively disallowed on April 17, 1946 and the libel was filed January 22, 1948. The question, therefore, is "When did the 'cause of action' arise?" It is petitioner's contention that his "cause of action" arose on April 17, 1946 when his *claim* was administratively disallowed and that, therefore, his suit, having been commenced within two years from that date, is not time-barred.

II. The Seaman's Cause of Action Arose upon Disallowance of His Claim

The rationale of the Court's opinion appears to be based upon a distinction between the terms "cause of action" and "right of action" thereon. In making this distinction the Court overlooked the fact that the phrase "right of action" nowhere appears in the text of either statute. Since only the phrase "cause of action" is used in the Suits in Admiralty Act, it is its meaning alone which must be ascertained and applied to the facts of this case.

Corpus Juris Secundum (Vol. 1, P. 983, Sec. 8(d).), states that: "A cause of action, as defined in the sense of a party's right, is a right of recovery; a right to bring and maintain an action." In I *American Jurisprudence*, P. 417, Sec. 20, it is stated: "The essential elements of a good cause of action are the existence of a legal right in the plaintiff, with a corresponding legal duty in the defendant, and a violation or breach of that right or duty with consequential injury or damage to the plaintiff, for which he may maintain an ac-

tion for the recovery of money damages, or other appropriate relief."

The basic fundamental element of a "cause of action" is the right to pursue a judicial remedy. By the very words of General Order 32, 8 Fed. Reg. 5414, administrative disallowance is a condition precedent to such court action. "Although it may be necessary that a number of separate facts exist in order to create a cause of action, *yet it is the happening of the last of such facts which brings the cause of action into existence.* Such an act, or the failure to act where there is a duty to do so, is the critical event which transforms a potential liability into one presently enforceable. Case cited. A liability, whether created by contract or by statute, is not the same as a cause of action." *Helmers* v. *Anderson*, 156 F. 2d 47, affirmed 331 U. S. 461. (Emphasis supplied.)

The period of limitation begins to run only from the time the cause of action accrues. *Van Dyke* v. *Reich*, 27 F. Supp. 436, affirmed 107 F. 2d 682; *Creedon* v. *Babcock*, 163 F. 2d 480; *Federal Reserve Bank of Atlanta, &C.* v. *Atlanta Trust Co.*, 91 F. 2d 283; *Dusek* v. *Pa. R. R. Co.*, 68 F. 2d 131; *Paulson* v. *U. S.*, 78 F. 2d 97; *Pettibone* v. *Cook County*, 120 F. 2d 850; *City of Beach* v. *Goepfert*, 147 F. 2d 480.

Corpus Juris states the rule thusly:

> "'The accrual of the cause of action' means the right to institute and maintain a suit; and whenever one person may sue another a cause of action has accrued and the statute begins to run, but not until that time. So, whether at law or in equity, the cause of action arises when and only when the aggrieved party has the right to apply to the proper tribunals for relief. The statute does not attach to a claim for which there is no right of action, and does not run against a right for which there is no corresponding remedy or for which judgment cannot be obtained. The true test therefore to determine when a cause of action has ac-

crued is to ascertain the time when plaintiff could first have maintained his action to a successful result." 37 *C. J. Limitation of Actions*, 810, Sec. 153. See also 54 *C. J. S. Limitation of Actions*, 11, Sec. 109 and 34 *Am. Jur.*, 91, *Limitation of Actions*, Sec. 113.

It cannot be disputed by respondents that as prerequisite to the institution of suit the seaman must file his claim and await its disallowance and that the filing and disallowance are conditions precedent to court action. The seaman must affirmatively prove the same in order to recover. His failure or refusal to file a claim is fatal: *Rodinciuc* v. *U. S.*, 175 F. 2d 479. There can be no doubt, therefore, that proof of filing and disallowance of his claim is one of the facts necessary to bring the "cause of action" into existence.

In *Chesapeake and Ohio Ry. Co.* v. *Dixon*, 179 U. S. 131, 139, this Court said "The cause of action manifestly comprised every fact which plaintiff was obliged to prove in order to obtain judgment, or conversely, every fact which defendant would have the right to traverse."

The language of the Court in *Dennison* v. *Payne*, 293 F. 333, is peculiarly apt: "The cause of the injury upon which the right of action is founded is not the cause of action itself, but is only one element in the cause of action." In *Hutchinson* v. *Ainsworth*, 73 Cal. 452, 15 P. 82, 84, it was said: "The facts upon which the plaintiff's right to sue is based, and upon which the defendant's duty has arisen, coupled with the facts which constitute the latter's wrong, make up *the cause of action*." (Emphasis by the Court.)

It is clear, therefore, that the Court erred in concluding that petitioner's cause of action arose at the moment of injury. It could not then be enforced. The application of the doctrine of limitation to an unenforceable claim is a legal paradox.

The Clarification Act is strikingly similar to state statutes and municipal ordinances requiring notice and pro-

hibiting court action until a certain time has expired after the giving of notice or until the claim has been rejected. 38 *Am. Jur.* 381-383, *Municipal Corporations*, Sec. 673-674. These statutes have given rise to many decisions interpreting the legislation involved. A review of these authorities is found in 3 *American Law Reports* 2d 704. It is there stated to be the majority view that where the law requires presentation or notice of claim and prohibits the claimant from bringing suit until rejection or until the lapse of a definite period of time after presentation of the claim, the claimant has no cause of action until the expiration of the prescribed time; and that the period of limitations does not begin to run until the end of the statutory prohibition.

Such was the reasoning of the Court of Appeals of the Ninth Circuit in *Thurston* v. *U. S.*, 179 F. 2d 514, in holding that the seaman's cause of action did not arise until disallowance of his claim. The Court below feared that the decision in *Thurston* v. *U. S.* gave the seaman the ability to retain his right to bring suit against the United States for as many years as he thought advantageous to himself (Record, p. 18). We do not so contend and no case so holds (3 *A. L. R.* 2d 721). But that question is not now before the Court. Suffice it to say that the Clarification Act does not prescribe the time within which claim is to be made. Under any circumstances, however, the question is one of fact rather than law for abstract judicial decision. *Aetna Cas. and S. Co.* v. *State* (1935; Tex. Civ. App.), 86 S. W. 2d 826.

The language of the Suits in Admiralty Act and the Clarification Act is clear, plain and unambiguous. There is no need, therefore, to resort to construction or conjecture.

Gorin v. *U. S.*, 111 F. 2d 712, Aff. 312 U. S. 19, 61 S. Ct. 429, Petition for Rehearing denied, 312 U. S. 713, 61 S. Ct. 617.

See also:

Story v. *Snyder*, 184 F. 2d 454, Cert. den. 71 S. Ct. 88;
Browder v. *U. S.*, 312 U. S. 335, 61 S. Ct. 599;
Chung Fook v. *White*, 264 U. S. 443, 44 S. Ct. 361;
Caminetti v. *U. S.*, 242 U. S. 470, 37 S. Ct. 192;
U. S. v. *Goldenberg*, 168 U. S. 95, 18 S. Ct. 3;
Helvering v. *City Bank Farmers Trust Co.*, 296 U. S. 85, 56 S. Ct. 70.

There remains to comment upon the cases cited by respondents in their Brief in Opposition.

Reading Co. v. *Koons*, 271 U. S. 58 (Respondents' Brief in Opposition, p. 7) is clearly distinguishable in that the Federal Employers Liability Act does not contain a provision for filing a claim and its disallowance as a prerequisite to suit.

Dickinson v. *The Mayor*, 92 N. Y. 584 (Respondents' Brief in Opposition, p. 13) does not control our state of facts. There recovery was sought because of a fall on an icy sidewalk. The Court held that since the cause of action existed at common law the statute related only to remedy. The opinion distinguished the case from that of *Fisher* v. *The Mayor*, 67 N. Y. 73, where the cause of action was statutory in origin. There the Court held that adherence to its requirements was essential to maintain it; and that demand was part of the cause of action and without it no cause of action existed.

Dillon v. *Board of Pension Commissioners*, 18 Cal. 2d 427 (Respondents' Brief in Opposition, p. 14), is not dispositive of the point involved herein. It represents a minority view holding that the running of the statute is suspended from the date of presentation until final action by the board. However, the dissenting opinion holds that the statute of limitations is not operative during any period in which the

plaintiff cannot bring suit and that the statute does not begin to run until the claim has been rejected.

In *Wilson* v. *Weber County*, 100 Utah 141 (Respondents' Brief in Opposition, p. 14), suit was brought to recover fees paid under a statute subsequently declared void. This case merely held that since the statute was void, there was no need to make a demand in the first place.

Young v. *City of Seattle*, 30 Wash. 2d 357 (Respondents' Brief in Opposition, p. 14), did not pass on the point involved herein. The Court concluded its opinion by saying: "In view of our holding herein, it is not necessary to discuss the question of when appellants' cause of action accrued, whether at the date of the collision or the date when appellants might institute their action."

Conclusion

Petitioner respectfully contends that under the authorities cited, his cause of action did not accrue until he had the right "to enforce his claim by court action" (War Shipping Administration General Order 32, 8 Fed. Reg. 5414). The ability to pursue a judicial remedy did not exist until his claim was administratively disallowed. Prior to the disallowance he had but a claim. After that it became a cause of action. Petitioner did commence "court action" within two years thereafter.

For these reasons petitioner prays that the judgment of the Court of Appeals for the Third Circuit be reversed.

Respectfully submitted,

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